

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

SUNNYROCK BUILDING & DESIGN)
CO., Inc.,)

Plaintiff,)

v.)

ERIC A. BALCH and BRENDA K.)
BALCH, MERRILL LYNCH CREDIT)
CORPORATION, and MORTGAGE)
ELECTRONIC REGISTRATION)
SYSTEMS, INC.,)

Defendants.)

Civil No. 2007-121

ATTORNEYS:

Stacy L. White, Esq.
St. Croix, U.S.V.I.
For the plaintiff.

Carol Ann Rich, Esq.
St. Thomas, U.S.V.I.
For the Defendants.

ORDER

GÓMEZ, C.J.

The plaintiff in this action, Sunnyrock Building & Design Co., Inc. ("Sunnyrock"), entered into an agreement (the "Agreement") with the defendants, Eric A. Balch and Brenda K. Balch (together, the "Balchs"), for construction services on the Balchs' property on St. John, U.S. Virgin Islands. A dispute over payment for those services arose. Sunnyrock thereafter filed a construction lien (the "Lien") against the Balchs' property at the Office of the Recorder of Deeds on St. Thomas,

U.S. Virgin Islands. Sunnyrock brought this action¹ to foreclose on the Lien and have the Balchs' property sold.²

The Balchs now move for an order voiding the Lien³ and awarding them compensatory and punitive damages,⁴ and dismissing or staying this action pursuant to an arbitration clause. Sunnyrock asserts that it has in fact made a demand for arbitration on the Balchs,⁵ and requests a stay of this action

¹ This action was originally brought in the Superior Court of the Virgin Islands. The Balchs removed the action to this Court on September 21, 2007, pursuant to 28 U.S.C. § 1441(a). The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a).

² In addition to the Balchs, Sunnyrock named Merrill Lynch Credit Corporation ("Merrill Lynch") as a defendant, alleging that Merrill Lynch is the holder of a mortgage on the Balchs' property. Sunnyrock also named Mortgage Electronic Registration Systems, Inc. ("MERS") as a defendant, alleging that MERS is a party to the mortgage. To date, neither Merrill Lynch nor MERS has entered an appearance in this action before the Court.

³ The Balchs assert that the Lien should be voided because Sunnyrock filed it in bad faith and because its amount is overstated.

⁴ The Balchs argue that they are entitled to compensatory damages for the expenses they have incurred in attempting to have the Lien voided, and punitive damages for Sunnyrock's alleged bad faith in filing the Lien.

⁵ Attached to Sunnyrock's Opposition to Motion to Void Lien and Dismiss Complaint is an affidavit of Sunnyrock's president, affirming that a demand for arbitration was made. (Hendren Aff. 2). Sunnyrock contends that it brought this action in order to preserve the Lien, pursuant to title 28, section 271 of the Virgin Islands Code. That section provides, in pertinent part:

No notice of lien . . . binds any property for a period of time longer than 90 days after the recording of the

pending arbitration.

Congress enacted the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, to overcome judicial resistance to arbitration. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006). "[U]pon being satisfied that the making of the agreement for arbitration . . . is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4.

Construction services, and payment for those services, are at the center of the Agreement. To the extent there was a dispute relating to payment for those services, those issues were to be submitted to arbitration:

[A]ll claims and disputes between the Contractor and the Owner arising out of or relating to this Agreement, or the breach thereof, shall be decided by arbitration.

(Defs.' Mot. to Void Bad Faith, Overstated Construction Lien and Dismiss the Compl., Exh. A1 at 9). The dispute between the parties was born out of an alleged failure to pay for construction services. That dispute necessarily arises from the Agreement, and touches matters clearly contemplated by the arbitration clause. Accordingly, those issues are arbitrable. See *Brayman Constr. Corp. v. Home Ins. Co.*, 319 F.3d 622, 626 (3d

notice of lien unless within that time an action to foreclose the lien is commenced

28 V.I.C. § 271(a)

Cir. 2003) ("If the allegations underlying claims 'touch matters' covered by the arbitration clause in a contract, then those claims must be arbitrated, whatever the legal labels attached to them."). Indeed, the parties acknowledge that the dispute is subject to arbitration.

The Balchs urge that even if the Court dismisses or stays this action, the Court may nevertheless decide matters relating to the Lien.⁶ That result may be obtained only if the Lien is outside the scope of the arbitration clause. Here, however, the Lien was a prerequisite for the foreclosure action. Just as the foreclosure action is arbitrable, the Lien giving rise to that foreclosure is inextricably interwoven with the foreclosure, and is thus subject to arbitration.

Accordingly, because all of the claims in this dispute are subject to arbitration, the Court may dismiss the action. See *Lloyd v. Hovensa LLC.*, 243 F. Supp. 2d 346, 352 (D.V.I. 2003) ("[W]hen all the claims involved in a case are arbitrable, there is no reason for a court to retain jurisdiction over the case") (citing *Seus v. John Nuveen & Co., Inc.*, 146 F.3d 175, 179 (3d Cir. 1998)).

⁶ In support of this argument, the Balchs cite several state court decisions, but concede that "this issue has apparently not yet been addressed in the Virgin Islands." (Mem. of Law in Supp. of Mot. to Bad Faith, Overstated Construction Lien and Dismiss the Compl. at 5).

For the reasons stated above, it is hereby

ORDERED that all pending motions in this action are **DENIED**;
it is further

ORDERED that this matter is **DISMISSED**; and it is further

ORDERED that the Clerk of the Court shall close this matter.

Dated: October 23, 2007

S_____
CURTIS V. GÓMEZ
Chief Judge

copy: Hon. Geoffrey W. Barnard
Stacy L. White, Esq.
Carol Ann Rich, Esq.
Carol C. Jackson
Lydia Trotman
Claudette Donovan
Olga Schneider
Gregory F. Laufer